IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3162 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL INSURANCE CO LTD.

Versus

DHARMENDRASINH NARENDRASINH RAIJADA

Appearance:

MS LILU K BHAYA for Petitioner

RULE SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 02/05/2001

ORAL JUDGEMENT

Heard Ms. Lilu K. Bhaya learned advocate for the appellant. Respondents served. On request of learned advocate for the appellant, appeal is taken up for final hearing.

2. This is an appeal filed under Section 173 of the Motor Vehicle Act,1988 (for short "the Act") at the instance of original opponent no.2 - insurer of the offending vehicle so as to challenge the impugned judgement and award passed by M.A.C.Tribunal, Rajkot dated 25/7/2000 in the proceedings of M.A.C.Petition No. 1936 of 1999 under Section 140 of the Act.

3. It would be pertinent to note that impugned award passed under Section 140 of the Act being in the nature of interim award subject to adjustment against the award which may be passed in the main claim petition being M.A.C.Petition No. 1936 of 1999, it would not be just and proper to interfere with the impugned award at this stage of the matter. However, an undertaking from the respondent no.1 - original claimant shall be taken to the effect that claimant shall obtain the decision on merits in main claim petition being M.A.C.Petition No.1936 of 1999.

4. In the above stated premise, following orders are passed :

(i) The opponent no.1 - original claimant of M.A.C.Petition No. 1936 of 1999 is hereby directed to file an undertaking within a period of four weeks from the date of service of this order before the M.A.C.Tribunal, Rajkot in the proceedings of M.A.C.Petition No. 1936 of 1999 to the effect that claimant shall not abandoned the claim petition nor shall withdraw or permitted to be dismissed for default or for any other cause and claimant shall obtain the decision on merits.

On undertaking being filed by the original claimant before the Tribunal, the Tribunal shall pass appropriate order for disbursement of the amount of the impugned award.

(ii) It is stated at bar on behalf of appellant that entire amount of impugned award has been deposited as per the instruction. However, learned advocate shall send instruction to the appellant to deposit the amount within a period of four weeks in the Tribunal and the

Tribunal shall invest 50% of the amount as per the award and shall disburse 50% of the amount against the security to be furnished to the satisfaction of the Tribunal to the claimant.

5. Subject to aforesaid observation and direction given hereinabove, appeal stands disposed of as rejected with no order as to costs.

(A.K.Trivedi,J.)

(vipul)